IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.M.C. No.4284-85/2005

Ms.Namita Ganwani & Anr. ..... Petitioners
! through: Mr.Satish Bakshi, Advocate

VERSUS

$ State & Anr. ..... Respondents
^ through: Mr.Rao Ranjit, Advocate for Respondent No.2
Mr.Ranjit Kapur, Advocate for State.

RESERVED ON : 01-11-2007

% **D**ATE OF DECISION: 27-11-2007

CORAM:
* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. Vide the present petition under Section 482 of the Code of Criminal Procedure the petitioners seek quashing of the complaint under Section 138 of the NI Act filed by the respondent no.2 Citibank and compensation from the respondent no.2 for having filed the complaint with the sole motive of causing harassment to the petitioners. However at the hearing held on 03.04.07 learned counsel for the petitioners restricted claim only to the compensation claimed

on account of the harassment of the petitioners by the complainant bank.

2. Facts necessary to dispose of the present petition are that the complainant is a banking institution having its branches all over the country. The branch of the complainant situated at Mumbai gave a loan to Ms.Namita Ganwani, petitioner no.1 and her husband Suresh Ganwani, petitioner no.2. Both the petitioners are the residents of Mumbai.

3. Petitioner no.1 issued 12 post-dated cheques in favour of the complainant bank towards part discharge of the afore-said loan.

4. The cheques when presented for encashment were returned unpaid by the banker of the petitioners.

5. Statutory notice of demand as contemplated under Section 138 of the NI Act was got served by the complainant bank upon the petitioner no.1 as also petitioner no.2 who was a co-borrower. It is to be noted that said notice was sent at the residential address of the petitioners and was addressed to both the petitioners.

6. When the petitioners failed to make payment of the amount covered by the dishonoured cheques inspite of service of statutory notice, 5 complaints under Section 138 of the NI Act were filed by the complainant bank. In respect of 8

dishonoured cheques, 3 complaints were filed in the courts at Mumbai and for 4 remaining cheques, 2 complaints were filed in the courts at Delhi.

7. The present petition relates to the complaint bearing no.900/1 titled as '*Citibank v Namita Ganwani*' filed in respect of two cheques bearing nos.286314 and 286315 and dated 1.12.02 and 1.1.03 respectively. Both the cheques were issued for an amount of Rs.17,499/- and drawn on the Bank of Maharashtra.

8. Taking cognizance of the complaint no.900/1 vide order dated 24.03.03 learned Metropolitan Magistrate summoned the petitioners to face trial for an offence under Section 138 of the NI Act.

9. During the course of trial of the present complaint petitioner no.2 filed an application for discharge on the ground that is not the drawer of the cheques in question.

10. A perusal of the record of the court of the learned Metropolitan Magistrate shows that on 29.10.04 the counsel for the complainant bank stated before the court that the proceedings be dropped against the petitioner no.2.

11. Noting the statement of the counsel for the complainant, vide order dated 29.10.04 the learned Metropolitan Magistrate directed that the proceedings be

dropped against the petitioner no.2.

12. Learned counsel for the petitioners seek compensation on following 2 counts:-

I. That the petitioner no.2 who was not the drawer of the cheques in question was impleaded as an accused in the present complaint. That this caused great inconvenience to petitioner no.2 as on every date of hearing he used to travel from Mumbai to Delhi.

II. That the complainant bank was not justified in filing the present complaint in the court at Delhi for the reason that the whole transaction relating to the loan took place in Mumbai, petitioner no.1 handed over the cheques in question to the complainant bank in Mumbai and three complaints relating to dishonour of other cheques forming part of same transaction had already been filed in Mumbai.

13. In support of the petition, learned counsel for the petitioners had undertaken to supply to the court judgments and literature relating to the rights of the consumer. However, he did not supply the same.

14. Learned counsel for the complainant bank justified the filing of the present complaint in the court at Delhi by contending that the legal department of the complainant bank is situated in Delhi and that the statutory notice of demand for

payment of amount of dishonoured cheques was sent to the petitioners by the complainant bank from Delhi. That in view of law laid down by the Supreme Court in the decision reported as *K.Bhaskaran v Sankaran Vaidhyan Balan & Anr* (1999)7 SCC 510 the court in Delhi has the territorial jurisdiction to try the present complaint.

15. Relevant portion of the decision of the Supreme Court in *Bhaskaran*'s case which is heavily relied upon by the counsel for the respondent reads as under:-

> "15. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence : (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.
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> 16. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:
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> > "178. (a)-(c)
> > (d) Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

> 17. Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

16. Thus clearly in view of law laid down by the Supreme Court in *Bhaskaran*'s case, the courts at 5 different locations have the territorial jurisdiction to entertain a complaint under Section 138 of the NI Act. But the practice of filing the complaint at courts situated in different locations in respect of cheques forming part of same transaction has to be deprecated.

17. In the instant case, it is noteworthy that all 12 cheques issued by the petitioner no.1 were returned dishonoured. The said dishonour must have caused great inconvenience to the complainant bank. In the light of the fact that the conduct of the petitioners also caused inconvenience to the complainant bank, petitioners are not entitled in equity to be recompensed for the inconvenience caused to them by the complainant bank.

18. The petition is devoid of any merits and is dismissed.

19. No costs.

November 27, 2007 PRADEEP NANDRAJOG, J.
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